Supreme Court, U. S.
FILED
JUL 3 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

* * *

NO. 78-6[redacted]

* * *

HILMAR G. MOORE, RAUL JIMENEZ, AND JAMIE CLEMENTS, INDIVIDUALLY AND AS CHAIRMAN AND MEMBERS, RESPECTIVELY, OF THE TEXAS BOARD OF HUMAN RESOURCES, ET AL.,

Appellants

vs.

JOHN PLEASANT SIMS AND WIFE, MARY CARTER SIMS, INDIVIDUALLY AND AS NEXT FRIENDS OF THEIR MINOR CHILDREN, SABRINA MARIE SIMS, PAUL EDWARD SIMS, AND SHAWANA EVETTE SIMS,

Appellees

* * *

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

* * *

VOLUME II

APPENDIX TO JURISDICTIONAL STATEMENT

* * *

JOHN L. HILL
Attorney General of Texas

DAVID M. KENDALL
First Assistant
Attorney General

DAVID H. YOUNG
STEVE BICKERSTAFF
C. J. CARL
Assistant Attorneys General

Attorneys for Appellants

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. _____

On Appeal From The United States District
Court For The Southern District Of Texas
Houston Division

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APPENDIX H

APPLICATION FOR STAY OF AMENDED JUDGMENT OF UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISON TO THE HONORABLE WILLIAM H. REHNQUIST MAILED JUNE 6, 1978

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. _____

RAUL JIMENEZ, ET AL.,
Appellants

vs.

JOHN PLEASANT SIMS, ET AL.,
Appellees

APPLICATION FOR STAY OF AMENDED JUDGMENT OF UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

TO THE HONORABLE WILLIAM H. REHNQUIST, ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT:

Appellants pray that an order be entered staying the Amended Judgment of the United States District Court for the Southern District of Texas, Houston Division, entered on March 8, 1978, pending appeal and a final determination of the matter by this Court, only in so far as such Amended Judgment would compel the emergency ex parte hearing, pursuant to Chapter 17 of Title 2 of the Texas Family Code, to be held "[not]

beyond the very day of seizure [of a child]." In support of this application, Appellants respectfully show as follows:

1. The Appellees instituted this suit in the United States District Court for the Southern District of Texas, Houston Division, seeking declaratory and injunctive relief holding various provisions of Chapters 11, 14, 15, 17, and 34 of Title 2 of the Texas Family Code unconstitutional.

2. On February 23, 1978, the three-judge District Court entered Judgment for Appellees granting a permanent injunction barring the use of certain provisions of the Texas Family Code by the Texas Department of Human Resources. Copies of the Memorandum Opinion, the Judgment, and the Amended Judgment are attached to this application, as Exhibit A.

3. In a motion filed in the District Court, Appellants requested that the injunction be stayed pending appeal from the Amended Judgment to this Court. On March 15, 1978, the District Court denied that motion for a stay. Copies of the motion and order are attached to this application as Exhibit B.

4. In an application filed with the Honorable Lewis F. Powell, Jr., Circuit Justice for the Fifth Circuit, Appellants requested that certain portions of the injunction be stayed while the appeal to this Court was pursued. On March 29, 1978, Associate Justice Powell denied that application for a stay. Copies of that application and the denial thereof are attached to this application, as Exhibit "C".

5. The jurisdiction of this Court to review this case on appeal rests upon 28 U.S.C. §§ 1253 and 2101(b). Notice of appeal was filed on March 20, 1978. A copy of that

notice is attached as Exhibit D. Authority to issue the stay requested is provided in Rule 18 and 51 of the Supreme Court Rules.

6. Appellants will be seeking review by this Court of several aspects of the three-judge court's Amended Judgment enjoining enforcement of various provisions of the Texas Family Code. However, the purpose of the instant application for a stay is to seek immediate and temporary relief from only one aspect of the Amended Judgment of the court below.

7. Appellants' primary contention on appeal will be that the civil progeny of *Younger v. Harris*, 401 U.S. 37 (1971) have extended the dictates of comity abstention to the facts of the instant case. Moreover, the lesson of *Rizzo v. Goode*, 423 U.S. 362 (1976) that prophylactic injunctive prohibitions against supervisory level and executive personnel who have not participated in the alleged constitutional violations are invalid and improper, will be raised. These principles will be shown to be particularly applicable in a situation where the real object of the lower federal court's intrusion is the state judiciary, rather than the nominal named defendants who are Appellants herein. The real defendants who made the decisions complained of were dismissed from the instant case apparently on the basis of judicial immunity; however, the policy-making board, the top administrator, and two line supervisors of the Texas Department of Human Resources were left in the case.

The Court below held ten provisions of the Texas Family Code unconstitutional. Only two of the ten (Sections 34.06 and 34.08) are even colorably within the control of the Texas Department of Human Resources and its employees. The questions presented in the appeal will raise substantive issued about several of the

District Court's holdings. However, this instant application seeks a stay only of the most egregious invasion of the operation of the state's judicial system.

While approving the statutory basis upon which the emergency seizure of a child may take place, the court below held that the initial statutorily mandated hearing was constitutionally defective in not being required to be held "immediately." In describing the due process standard it was imposing, the District Court said, "Barring unusual circumstances, . . . this ex parte presentation to a judicial authority [may not be held] beyond the very day of seizure." If there had been any doubt that this language means that the emergency hearing must be held within 24 hours of the time a child is taken into possession, the managing judge resolved it at a conference with counsel for all parties in his chambers in January 1978. After the Judgment was entered, Defendant Commissioner Jerome Chapman so advised all field staff in Executive Letter 78-5, a copy of which is attached as Exhibit E.

The reaction of state district judges, who have jurisdiction over emergency suits under Chapter 17, as well as other actions pursuant to Title 2 of the Texas Family Code, is evidenced by the letters and orders from Judges Cole, Hester, Shackleford, Moore, and Gibson, copies of which are attached as Exhibits F, G, H, I, and J, respectively. Clearly child protective service workers do not have it within their power to compel compliance with the federal district court's insistence that the emergency ex parte hearing be held within 24 hours of removal. If no state district judge is able or willing to conduct the required hearing on a weekend, keeping possession of a child subjects a worker to the risk of a suit for damages by the parents. But to return a child removed from a life-threatening or otherwise physically endangering situation would subject the worker at least to contempt proceedings by state district judges.

There is nothing unreasonable about waiting until the next scheduled work day before conducting an emergency ex parte judicial hearing concerning the seizure of a child to protect him from an immediate danger to his health or physical safety. That is the rule provided by Title 3 of the Texas Family Code regarding the detention of "Delinquent Children and Children in Need of Supervision." (Sections 53.05(c) and 54.01(a)). It seems highly doubtful that the United States Supreme Court would ultimately hold that it is a denial of due process of law to wait until the next scheduled workday to hold an ex parte emergency hearing concerning a child removed pursuant to Title 2 of the Texas Family Code.

The simple truth of the matter is that compliance with the three-judge district court's Memorandum Opinion and Amended Judgment in regard to holding the emergency hearing necessary to seek and obtain judicial ratification of the seizure of a child in "extraordinary circumstances" will result in the return of abused and neglected children to potentially life-threatening or otherwise physically endangering situations, because many, if not most, Texas state district judges either cannot or will not hold the emergency ex parte hearing on weekends. Frequently, in most rural areas of the state and often in some urban areas of the state, no district judge will actually be physically available for such a hearing. Are the little children to suffer for this?

WHEREFORE, Appellants pray that the Amended Judgment of the United States District Court for the Southern District, Houston Division, be stayed pending appeal and a final determination of the matter by this Court, in so far as such Amended Judgment would compel the emergency ex parte hearing, pursuant to Chapter 17 of Title 2 of the Texas Family Code, to be held "[not] beyond the very day of seizure [of a child]," in

order to allow the holding of such hearing on the next scheduled workday.

Respectfully submitted,

JOHN L. HILL
Attorney General of Texas

DAVID M. KENDALL
First Assistant Attorney General

STEVE BICKERSTAFF
Assistant Attorney General

DAVID H. YOUNG
Assistant Attorney General

s/s

C. J. CARL
Assistant Attorney General

Attorneys For Appellants

P.O. Box 12548, Capitol Station
Austin, Texas 78711
AC 512 - 475-4368

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Application for Stay of Amended Judgment of United States District Court for the Southern District of Texas, Houston Division has on this the *6th* day of June, 1978 been sent by United States Postal Service, Certified, Return Receipt Requested, to the following:

JOHN QUINCY CARTER
ROBERT BYRD
WENDELL E. COOPER PORTER
Gulf Coast Legal Foundation
609 Fannin Street, Suite 1900
Houston, Texas 77002

MARTIN J. GRIMM
1318 Pech Road
Houston, Texas 77006

s/s

C. J. CARL
Assistant Attorney General

Exhibits A through E have not been reproduced with this Application as they have been reproduced elsewhere in this Appendix.

EXHIBIT F

March 22, 1978

The Honorable John Hill
Attorney General
Capitol Station
Austin, Texas 78711

ATTN: Mr. Colin J. Carl

RE: Sims Case

Dear General Hill:

This letter is in reference to the above case which is now pending in the Federal Courts.

Judge Robert L. Lowry, Judge W. H. Miller and I had the privilege of advising with the Honorable John Singleton, U.S. District Court concerning the Judgment entered in this case, declaring certain portions of Title 2 of the Texas Family Code unconstitutional. After visiting with Judge Singleton, I have concluded, and I believe Judge Lowry and Judge Miller will most likely concur, that the proposed Order and Rules, which are attached for your information, will correct any constitutional deficiencies of Title 2 of the Texas Family Code.

We, the three Judges who hear termination suits filed by the State, have not formerly approved the proposed Order and Rules because Judge Lowry is out of the City this week, and I will be out of the State for the next three weeks, but we will attempt to finalize the Order and Rules at the earliest possible time.

The Judgement entered by the Federal Court requires that the burden of proof is on the State to prove its case

by clear and convincing evidence in any suit in which the State seeks conservatorship of a child or termination of the parent-child relationship. It is my opinion that this is a procedural matter and that it is mandatory that the State courts continue using the burden of proof which is the preponderence of the evidence set out by our statute and the Supreme Court of Texas until there is further instruction from the Federal Court.

Respectfully submitted,

Criss Cole
CC/mg
encls.
cc: Judge Robert L. Lowry
Judge W. H. Miller
Judge Sam Emison

Mr. George Ford
Harris County Child Welfare Unit

Mr. Fred Biel
General Counsel
Legal Services Div.
State Department of Human Resources
John H. Reagan Bldg.
Austin, Texas 78711

March 29, 1978

Honorable Criss Cole
Judge of the 315th District Court
Family Law Center Building
Houston, Texas 77002

Re: Sims Case

Dear Judge Cole:

I appreciate receiving your letter concerning the subject case. Of course I was not privy to your conversation with Judge Singleton, but it appears to us that the memorandum opinionis unequivocal regarding the standard of proof in the trial on the merits of any suit affecting the parent-child relationship when it states that "the fundamental right to family integrity requires at the very least that the State . . . prove its case by clear and convincing evidence." It is our conclusion that to use the preponderance of the evidence standard in a suit affecting the parent-child relationship involving the State, absent a stay or until reversal on appeal, would be in direct contravention of the United States District Court's Amended Judgment and consequently would risk the voiding of any results reached under the statutory standard.

The rules which you and Judges Lowry and Miller propose to adopt regarding the ex parte hearing under Chapter 17 present another problem, based on a conversation in which I participated along with the plaintiffs' attorneys in the subject case with Judge Singleton in his chambers in January of this year. I asked Judge Singleton the meaning of the language of the memorandum opinion requiring the holding of the ex parte hearing "[*not*] beyond the very day of seizure [of a child]." I understood him to indicate that the court

meant within 24 hours and subject to no general exceptions (such as weekends or legal holidays). Since we think the reasonable requirement regarding holding this ex parte hearing would be to have it the next scheduled workday, I would be pleased to learn that I misunderstood him.

Thus, we are appealing both the standard of proof holding and the failure to take into account the normal work week when establishing the constitutional standard for holding the equivalent of a TRO hearing (the immediate ex parte hearing under Chapter 17). As you may know we are also planning to appeal the holding regarding CANRIS and the requirement that the attorney ad litem for the child be appointed as soon as the immediate ex parte hearing (which is analogous to a TRO hearing), an aspect which is not explicitly stated in the memorandum opinion, but which Judge Singleton explained at the conference in his chambers in January.

Finally, with regard to your proposed order concerning the physical presence of the child at the immediate ex parte hearing, I do not have any disagreement. Though the memorandum opinion of the United States District Court in the subject case seems to assume physical delivery, it certainly does not mandate it. Thus, I think your proposed order represents the proper and reasonable approach.

Sincerely,

C.J. Carl
Assistant Attorney General

CJC/fd

cc: Honorable Robert L. Lowry
Honorable W. H. Miller
Honorable Joe Ingraham
Honorable John V. Singleton, Jr.
Honorable Ross N. Sterling
Mr. George Ford
Mr. Fred Biel

March 30, 1978

Mr. Fred Biel, General Counsel
Legal Services Division
John H. Reagan Bldg.
Austin, Texas, 78701

Re: Procedures Implemented by Harris County Courts In Response To Sims Decision

Dear Sir:

Recently you received a copy of a letter from Judge Criss Cole, 315th District Court, Harris County, Texas to Attorney General Hill. Also, you received a copy of a proposed Order and Rules of the three Harris County Courts hearing petitions brought by the Harris County Child Welfare Unit.

As Judge Cole states in his letter, it is his opinion that the proposed Order and Rules correct any constitutional deficiencies of Title II of the Texas Family Code. The proposed Order and Rules were drafted after Judges Cole, Lowry, and Miller had discussed the *Sims* judgment with Judge Singleton.

The proposed Order and Rules conflict with Departmental policy set forth in the letter concerning the *Sims* decision from Commissioner Chapman to all field staff. The Harris County Courts reviewed the Departmental policy prior to preparing the proposed Order and Rules.

Please take appropriate steps to reconcile the conflict between the proposed Order and Rules and Departmental policy. Thank you for your assistance.

Sincerely,

s/s

George Ford
Agency Attorney

cc: Judge Criss Cole, 315th District Court
Judge Robert L. Lowry, 313th District Court
Judge W. H. Miller, 314th District Court
Judge Sam Emison, 257th District Court
Mr. Colin Carl, Assistant Attorney General
Mr. Howard Stomel, Regional Attorney

May 2, 1978

George Ford, Agency Attorney
Harris County Child Welfare Unit
4040 Milam, Suite 301
Houston, Texas 77006

Dear Mr. Ford:

Attached is a copy of a letter from Assistant Attorney General Colin Carl responding to the correspondence from Judge Cole to which you referred in your letter of March 30th. The Executive Letter No. 78-5 was drafted with the assistance of the Attorney General's Office, based on that office's understanding of what the court was requiring in *Sims* as indicated in Mr. Carl's letter.

Insofar as possible, staff of the Department of Human Resources is willing to work with the judges of our state district courts to resolve some of the practical problems presented by the *Sims* case. We understand the difficulties generated by the Sims decision and the department's executive letter, and we are working through the Attorney General's Office to attempt to resolve or reduce these problems.

Sincerely,

s/s

Frederick J. Biel
General Counsel

FJB:mh

Attachment

cc: Judge Criss Cole, 315th District Court
Judge Robert L. Lowry, 313th District Court
Judge W. H. Miller, 314th District Court
Judge Sam Emison, 257th District Court
Mr. Colin Carl, Assistant Attorney General
Mr. Howard Stomel, Regional Attorney

RULES OF THE 313th, 314th and 315th JUDICIAL DISTRICT COURTS OF HARRIS COUNTY, TEXAS

RULE 1

An attorney ad litem shall be appointed for a child in any suit affecting the parent-child relationship under Title 2 of the Texas Family Code in which the State is a party.

RULE 2

Unless the child is taken into possession pursuant to a temporary order entered by a court under Section 11.11 of the Texas Family Code, an officer or representative of the State shall file a petition in the court immediately after possession of the child and an emergency ex parte hearing shall be held promptly but not more than 24 hours after the child is taken into possession.

(1) When a child is taken into possession on a Friday P.M., Saturday, Sunday, or on a legal holiday which includes the P.M. of the day preceding the legal holiday, then such heaing shall be held on the first working day after the child is taken into possession. If unusual circumstances require, the court shall hold a hearing at a time and place reasonable which would serve the best interest of the child or children, or any reasonable time requested by the parents.

RULE 3

Reasonable notice of the hearing, either oral or written, shall be given stating the time, place and purpose of the emergency ex parte hearing. Such notice shall be given to the child's parents if they can be found or any other person who can reasonably be expected to know their whereabouts.

RULE 4

A date for a full adversary hearing shall be set with proper notice to the parents within ten days, measured from the date at which time Harris County Child Welfare Unit has taken possession of the child or children.

APPROVED: _____ BY: _____
Date

Judge Robert L. Lowry
313th District Court

_____
Judge W. H. Miller
314th District Court

_____
Judge Criss Cole
315th District Court

ORDER

It appears to the Courts that the Harris County Child Welfare Unit should be designated to receive and take possession of the children in Harris County under Title 2 of the Texas Family Code and be responsible for their protection.

Further, it appears that the physical presence of the children at the emergency ex parte hearing would probably cause emotional harm to the children.

It is therefore, Ordered, Adjudged and Decreed that the Harris County Child Welfare Unit is hereby designated to receive and take possession of the children in Harris County for the Courts under Title 2 of the Texas Family Code and be responsible for their protection.

It is further Ordered, Adjudged and Decreed that the Harris County Child Welfare Unit only physically deliver the children to the Courts at the time of the emergency ex parte hearing where there are extenuating circumstances.

SIGNED AND ENTERED ON THE _____day of_____, 1978.

_____
Judge Robert L. Lowry
313th District Court

_____
Judge W. H. Miller
314th District Court

_____
Judge Criss Cole
315th District Court

EXHIBIT G

March 29, 1978

Mr. Jerome Chapman
Commissioner
Texas Department of Human Resources
John Reagan Building
Austin, Texas 78711

Re: John Pleasant Sims, et
vs. Raul Jimenez, et al

Dear Mr. Chapman:

I recently received from the Attorney General's Office a copy of your Executive Letter of March 1, 1978, No. 78-5, setting out procedures for the Department of Human Resources to follow in an effort to comply with the holding in *Sims*.

At that time I made a mental note of the following language:

> "Make every reasonable effort to serve notice on the parents that *a hearing on the removal will be held within twenty-four (24) hours after removal.*"

My thoughts at the time were that the underlined portion above was a matter wholly beyond the control of the DHR representative and would soon present problems. I and my brethren on the bench are rather jealous of our prerogatives as to the setting of hearings within our courts and the above language presumes that the taking of a child into custody by the DHR representative will somehow automatically convene a district court and work a setting without consulting the court.

I cannot believe that DHR has been confronted only in our area with district judges who have explained to its representatives with more or less patience, depending upon the personality of the judge, that hearings will continue to be set by the judge and not by the day and hour of a removal. Such has now occurred in this area as reflected by the memorandum of John S. Jacobson dated March 27, 1978, a copy of which is enclosed.

I have always sought to work with the Texas Department of Human Resources recognizing their thankless task in emergency removal situations. I also early suggested my very strong reservations as to the constitutionality of Chapter 17 of the Family Code and its ". . .passing lip service to due process (if any reader would equate due process with a hearing without notice to parties in interest). . ."[1] But, even in the interest of trying to administratively shore up poor legislation, I refuse to become a night magistrate.

I suggest that *Sims* be re-examined as to the "twenty-four (24) hours rule." I find no such requirement in the Opinion except the language of the memorandum:

> "Barring unusual circumstances, the State's interest in the protection of the alleged victim of abuse and the resulting usurpation of parental rights does not justify holding this ex parte presentation to a judicial authority beyond the very day of seizure."

If this is the source, then it seems to me that the twenty-four (24) hour rule is an over-reaction to this language. In truth, if we are to apply the literal meaning, a child removed at 11:15 P.M. must be in court before midnight. The language permits no twenty-four-hour period apart from "the very day of seizure".

Texas statutes are replete with priority proceedings and constitutional process requiring immediate judicial attention. The best example is the right to be brought before a magistrate after arrest without warrant (Art. 14.06 C.C.P) The constitutional dimensions of the removed child and its parent situation is certainly no greater than that of the jailed adult. However, in its long history, it has never been questioned, either at the state or federal level, that the hearings to be accorded one arrested without warrant means a hearing during the regular working day of the courts. I would suggest that the three-man federal panel recognize that among the "unusual circumstances" would be removals at nights, on weekends and holidays. My feeling in this matter is reinforced by knowing two of the three judges and their less than flexible court hours.

I hope this letter is accepted in the spirit it is written. I seek to be helpful while asserting some of the few prerogatives still held by a State district judge. Maybe the "twenty-four (24) hour rule" need (sic) to be re-evaluated and the language in *Sims* re-examined.

Yours very truly,

Darrell Hester

DH:jms
Enc.
cys: As indicated on attached sheet

[1]*Emergency Protection of Children, Chapter 17, of the Family Code*, Darrell Hester; *Child Abuse and Protective Service in Texas*, State Bar, 1976.

cys to:

Mr. Fred Biel
General Counsel

Texas Department of Human Resources
John H. Reagan Building
Austin, Texas 78701

Mr. Collin J. Carl
Assistant Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711

Judge John Boyd
Chairman, Judicial Section
State Bar of Texas
P.O. Box 12487, Capitol Station
Austin, Texas 78711

Mr. John S. Jacobson
Supervisor
Protective Services Unit 38
Texas Department of Human Resources
35 Orange Street
Brownsville, Texas 78520

Ms. Sonia Arredondo
Program Director for Protective Services
Texas Department of Human Resources
815 N. Closner
Edinburg, Texas 78539

Mr. Moses A. Westbrook
Regional Director for Social Services
Texas Department of Human Resources
815 N. Closner
Edinburg, Texas 78539

Mrs. Donna Justice
Regional Attorney
Texas Department of Human Resources
815 N. Closner
Edinburg, Texas 78539

MEMORANDUM

TEXAS DEPARTMENT OF HUMAN RESOURCES

SUBJECT: Emergency Removal

TO:	FROM:
Ms. Sonja Arredondo Program Director for Protective Services Edinburg 360-1	John S. Jacobson Supervisor for Protective Services Unit 38 Brownsville 046-8

DATE: March 27, 1978

On March 23, 1978 at 6:00 p.m., we had to resort to the emergency removal of the Hernandez children (ages 6, 8, 10, 11) who had been alone since 1:00 p.m. We learned that the police had been called to the home at 8:41 p.m. on the 21st by a neighbor who observed smoke coming out of the hose and found the 6-year-old had caught a rag on fire while trying to cook something. The neighbor told the police that the father always leaves his children alone. We have had a case open on this family since 10-22-75. Mr. Hernandez' physical problems, emotional insecurity and immaturity, and alcoholism result in periodic lack of supervision, physical, medical and emotional neglect.

We contacted an Uncle who refused to help and no neighbors were willing to take on the responsibility of supervision. After obtaining authorization to remove from Miss Sonja Arredondo, Program Director, we followed procedures outlined in Executive Letter 78-5 and requested the presence of a police officer when we picked up the children. Officer Eduardo Flores and a supervisor accompanied us and secured the house as much as possible since the door could not be locked. A

note was left informing Mr. Hernandez of our actions, of the hearing which would be held within 24 hours, and of the need to obtain an attorney.

On March 24, Good Friday, we attempted to have the Ex-parte hearing. I could not reach our attorney but did succeed in contacting another District Attorney who agreed to represent us. However, the judges I talked to would not agree to a hearing on a holiday, although they were quite willing to sign an emergency order. I explained that our instructions mandated us to return the children unless a 24-hour Ex-parte hearing could be held.

The children were subsequently returned before the 24 hours expired. The father had been located at 8:00 a.m. (with the smell of alcohol still very evident) and expressed his characteristic defenses and denials. When it became apparent that we would have to return the children, we finally extracted his promise that he would not leave them alone again and had him sign a statement to that effect.

We have asked the next door neighbor to call us the next time the children are left alone and will be making visits when possible, as it unlikely that they will recieve much better care on a consistent basis than before. They will undoubtedly be left alone again and run the risk of physical danger, as well as continuing to engage in delinquent behavior.

We had hoped to have the court order Mr. Hernandez to accept therapy from Tropical MH/MR and to attend Alcoholics Anonymous.

It is evident that removals from Friday afternoon through Sunday morning are no longer possible under the Department's interpretation of the Sims decision.

Copies of this memo are being sent to those people listed below, in conformance with the instructions in Executive Letter 78-5:

> "If the hearing cannot be held because the district judge or county/district/criminal district attorney cannot attend, the worker must return the child to the home and provide whatever services are possible to protect the child from death or other permanent physical harm. In these instances, the worker must inform in writing the district judge, county/district/criminal district attorney, local law enforcement officials, the regional attorney, and the regional director for social services of the child's circumstances. The danger to the child must be clearly stated."

s/s

John S. Jacobson
Supervisor

JSJ:cp

cc: Mr. Moses A. Westbrook, Reg. Dir. for Social Services, Edinburg 108-1
Ms. Dona Justus, Regional Attorney, Edinburg 108-1
Ms. Sonja Arredondo, Program Director for P.S., Edinburg 360-1
Mr. Remberto G. Arteaga, Supervisor, Unit 11, Brownsville 046-8
Brownsville Police Department, Brownsville, Tx.
Mr. Tom Sullivan, Cameron County Child Welfare Attorney, Brownsville, Tx.
Judge Filemon Vela, Cameron County District Judge, Brownsville, Tx.

Judge Darrell Hestir, Cameron County District
Judge, Brownsville, TX
Case Folder
Files

April 25, 1978

The Honorable Darrell Hester
District Judge
One Hundred Ninety Seventh
District Court
Brownsville, Texas 78520

Dear Judge Hester:

Thank you for your recent letter outlining your concerns regarding this department's interpretation of the holding in *Sims*. I appreciate and share your concerns.

The drafting of Executive Letter No. 78-5 was an undertaking that consumed a considerable amount of time, a great deal of review and numerous revisions. It represented the combined input of program staff, in-house counsel, and representatives of the Attorney General.

This department does not agree with all of the holdings in the *Sims* decision. We recognize and support judicial prerogative as to the setting of hearings in your court. However, I am sure you understand that it was necessary to send instructions to our staff concerning the Federal Court's judgment.

The discussion of the requirement for an ex parte hearing in the Executive letter which you referred to as the "24-hour rule", was developed with the assistance of the Attorney General's Office. The Amended Judgment in *Sims* reads as follows:

> 4. That Section 17.02 is unconstitutional on its face insofar as it fails to require that the ex parte hearing be held immediately after possession of a child is taken by the State and insofar as it assumes that such hearing

will result in a finding that the State's temporary care or protection of the child is needed.

Your analysis of the "24-hour rule" paralleled concerns of this department when it began the task of preparing the Executive Letter. It is my understanding that the interpretation that a hearing is required within twenty-four hours after removal of a child was based on the language that you cited from the opinion in *Sims*, as well as conversations with the plaintiffs' counsel and the court.

I am aware of the practical problems imposed by the *Sims* decision. These problems are reinforced by your letter to me which emphasized the problems *Sims* has created for department staff and relations with the judiciary. With these problems in mind, the department is appealing part of the decision regarding the twenty-four hour hearing and we are working with the Attorney General's Office to determine what other remedies may be available. To date, our Motion to Stay the Judgment in *Sims* pending appeal, has been denied.

Although we recognize Executive Letter No. 78-5 and the *Sims* decision have placed staff in a difficult position, we are attempting to resolve the problems. I hope that, insofar as possible, the problems can be resolved.

Sincerely,

s/s

Jerome Chapman

JC:jbm

bcc: Colin Carl

EXHIBIT H

April 14, 1978

Mr. Bernie Lopez
Program Director
Texas Department of Human Resources
Box 3700
Amarillo, Texas 79106

Re: *Sims* Case Compliance

Dear Bernie:

The five District Judges, who operate in Potter, Randall and Armstrong Counties, have studied the effect of the Sims decision on the cases filed by the Texas Department of Human Resources. Our own conclusion as to the correct interpretation has been reinforced by a legal opinion we requested from the County Attorney and by a presentation at the West Texas Judicial Conference in Lubbock, Texas.

It is our intention to fully comply with Sims, (sic) which we feel can be accomplished by extending an initial hearing within twenty-four hours or on the next working day. As you know, Sims (sic) deals basically with a due process problem, and although the Federal Courts have written hundreds of decisions concerning the right to notice and hearing, none of these decisions has ever required hearings on weekends or holidays.

It is the hope of the Judges that your knowing our interpretation will be of assistance in our working together efficiently. By copy of this letter, I am informing Mr. Chapman of our conclusions since it appears that his current Executive Letter goes beyond the requirements as we interpret them.

Yours truly,

s/s

Jerry Shackelford

JS/lm

cc.(sic)
Mr. Jerome Chapman
Commissioner
State Office
Texas Department of Human Resources
Austin, Texas

Mr. George Harwood
Assistant County Attorney
Potter County Courthouse
Amarillo, Texas 79101

March 20, 1978

The Honorable Edward Nobles
Presiding Judge
108th District Court
Potter County Courthouse
Amarillo, Texas

The Honorable H. Bryan Poff
Presiding Judge
47th District Court
Potter County Courthouse
Amarillo, Texas

The Honorable Naomi Harney
Presiding Judge
251st District Court
Potter County Courthouse
Amarillo, Texas

The Honorable George E. Dowlen
Presiding Judge
181st District Court
Potter County Courthouse
Amarillo, Texas

The Honorable Jerry Shackleford
Presiding Judge
320th District Court
Potter County Courthouse
Amarillo, Texas

Re: Sims vs. State Department of Public Welfare, Civil Action No. 76-H-665 in the United States District Court for the Southern District of Texas

TO: The Presiding Judges of District Courts sitting in Potter County Texas:

This is to apprise you of the opinion of this office regarding the appropriate construction of "immediately" in the context of the judgment in the above referenced cause.

This judgment declares, inter alia, that Section 17.02 of the Texas Family Code is unconstitutional insofar as it fails to require that a temporary disposition hearing be held "immediately" after possession of the child is taken by the state. Thus, whether our procedure in

actions brought under Chapter 17 T.F.C. comply with this directive of the Court turns upon the time frame intended to be delimited by "immediately".

In the absence of any expression of intent attendent to the use of the term "immediately", clearly it can properly be construed as equivalent to phraseology such as "with due diligence", "as soon as practicable," and "within a reasonable time in light of the circumstances involved." See e.g. *McPherson v. St. Paul Fire and Marine Insurance Company* 350 F 2d 563 (5th Cir. 1965) and *National Surety Corporation v. Wells* 287 F 2d 102 (5th Cir. 1961).

The Court's mandate that a hearing pertaining to a child taken into possession pursuant to Section 17.01 T.F.C. be effected immediately after possession can be equated with the requirements of the motor (sic) Vehicle Statutes (Article 6701 d V.A.C.S.) that one arrested be immediately presented before a magistrate. The Texas Supreme Court has declined to apply the literal or strict interpretation of the term "immediately," as evidenced by its opinion in *Hicks v. Matthews* 266 SW 2d 846 (Tex. S.Ct. 1959), wherein it is reasoned at page 849 that

> "The word 'immediately' is a term of relative signification. Sometimes it is understood to mean instantaneously or without intervention of time, but, as used in most statutes, it is not to be construed so strictly. The law must be given a practical and reasonable application. Accordingly, the word 'immediately' is very generally held to mean with due diligence. The accused has the right to be presented without delay, but the question of what is delay must be determined by all the facts and circumstances. Necessarily some time must elapse between the arrest and the presentment before the magistrate."

It is noteworthy that in amending Article 14.06 of the Code of Criminal Procedure, which requires the arresting officer to present the accused before a magistrate, the legislature supplanted "immediately" with "without unnecessary delay".

It is therefore our opinion that, in the context of Section 17.02 T.F.C. "immediately" requires that a temporary disposition hearing pertaining to the child seized be afforded on the day of seizure, or if the child is taken after working hours, on the first working day following the seizure.

The foregoing must be qualified by the observation that the Court expressly stated in its opinion at page 26 that "the State's interest in the protection of the alleged victims of abuse and the resulting usurpation of parental rights does not justify holding this ex parte presentation to a judicial authority beyond the very day of seizure." However, we feel that the Court simply overlooked the fact that children may be taken into possession pursuant to Section 17.01 T.F.C. on Friday evening, Saturday or Sunday. That the *Sims* Court would require a convening of the District Court prior to the next working day stretches credulity beyond reason; surely the Court could not have intended to require an even more expeditious presentation of children for a temprrary (sic) disposition hearing than would be applicable to one accused of a crime, since the deprivation of right can be deemed no greater. The *Sims* case has been appealed directly to the United States Supreme Court, and hopefully the ambiguity of the District Court's opinion, and its incongruity with pre-existing law and precepts of reasonable statutory construction will be resolved.

If we can be of assistance in this or in any other matter please call on us at any time.

Very truly yours,

s/s
JOHN L. OWEN
Assistant County Attorney

APPROVED BY:

s/s
KERRY KNORPP
County Attorney

JLO:kk

May 10, 1978

The Honorable Jerry Shackleford
320th Judicial District of Texas
309 Courthouse
Amarillo, Texas 79101

Dear Judge Shackleford:

I have received a copy of your letter to Mr. Bernie Lopez outlining your concerns regarding this department's interpretation of the holding in *Sims*. I appreciate and share your concerns.

The drafting of Executive Letter No. 78-5 was an undertaking that consumed a considerable amount of time and involved a great deal of review. It represented the combined input of program staff, in-house counsel, and representatives of the Attorney General.

This department does not agree with all of the holdings in the *Sims* decision. We recognize and support judicial prerogative as to the setting of hearings in your court. However, I am sure you understand that it was necessary to send instructions to our staff concerning the Federal Court's judgment.

The discussion of the requirement for an ex parte hearing within 24 hours was developed with the assistance of the Attorney General's Office. The Amended Judgment in *Sims* reads as follows:

> 4. That Section 17.02 is unconstitutional on its face insofar as it fails to require that the ex parte hearing be held immediately after possession of a child is taken by the State and insofar as it assumes that such hearing will result in a finding that the State's

temporary care or protection of the child is needed.

Your analysis of the requirement for an immediate hearing paralleled concerns of this department when it began the task of preparing the Executive Letter. It is my understanding that the interpretation that a hearing is required within twenty-four hours after removal of a child was based on language from the court's opinion in *Sims*, which the Potter County Attorney referred to as qualifying his own legal opinion on page 3, as well as conversations with the plaintiffs' counsel and the court.

I am aware of the practical problems imposed by the *Sims* decision. These problems are reinforced by your letter to me which emphasized the problems *Sims* has created for department staff and relations with the judiciary. With these problems in mind, the department is appealing part of the decision regarding the twenty-four hour hearing and we are working with the Attorney General's Office to determine what other remedies may be available. To date, our Motion to Stay the Judgment in *Sims* pending appeal, has been denied.

Although we recognize Executive Letter No. 78-5 and the *Sims* decision have placed staff in a difficult position, we are attempting to resolve the problems. I hope that, insofar as possible, the problems can be resolved.

Sincerely,

Jerome Chapman

JC:fjb

bcc: Frederick J. Biel, 170-0
Natalyn Collins, 217-7
Colin J. Carl
Bernie Lopez

EXHIBIT I

M E M O R A N D U M

TEXAS DEPARTMENT OF HUMAN RESOURCES

SUBJECT: Attached Court Order

TO:	FROM:
Ms. Mary S. Barrett	Wayne Hairgrove
Program Manager	Lead Program Director
Children's Services	Protective Services
Arlington 012-5	Fort Worth 128-7

DATE: May 25, 1978

I have attached for your information a copy of the court order that I have just received from Judge Scott Moore, our Juvenile Judge in Tarrant County. You will see from reading the order that he has ordered us to hold in our custody any child removed under Chapter 17 from 2:00 p.m. on Friday to 1:00 p.m. on Monday, until an emergency hearing has been held. You will also see that he has made an exception for those children that we determine can be safely returned to their parent or custodian.

I am making a copy of this memorandum and this order available to Mike Poston, our Acting Regional Attorney, because I believe that a copy of this order should be sent to our Legal Division in State Office. If you have any questions about this order, please feel free to contact me.

s/s

Wayne Hairgrove

WH:gg

cc: Mr. J.W. Keith, 012-5
Mr. Lawrence G. Anderson, 012-5
Ms. Bobbie Mae Matthews, 535-0
Ms. Kaye Love, 530-0
Ms. Cynthia McKenzie, 098-1
Mr. Mike Poston, 128-9
Ms. Helen Grape, 128-9
Ms. Nancy Graham, 128-9
Ms. Allene Margowski, 128-3

Attachment

IN THE JUVENILE COURT

OF TARRANT COUNTY, TEXAS

O R D E R

Effective immediately, Wayne Hairgrove, Lead Program Director for the Tarrant County Child Welfare Unit of the State Department of Human Resources, and his agents and employees are ordered to hold in their custody any child removed by authority of the provisions of Chapter Seventeen of the Texas Family Code between the hours of 2 p.m. Friday and 1 p.m. Monday until an emergency hearing has been held except for those children that the Child Welfare Unit determines can be safely returned prior to the emergency hearing to the parent or custodian from whom they were removed.

Signed this *1st* day of *May*, 1978.

s/s

JUDGE SCOTT MOORE

EXHIBIT J

31 May 1978

Jerome Chapman, Commissioner
Texas Department of Human Resources
John H. Reagan Building
Austin, Texas 78701

Dear Commissioner:

On May 25th, I, Judge Decker of the 122nd District Court and Judge Morgan of the 212th District Court met with Mr. Lloyd E. Davis, Department of Human Resources Program Director for Galveston County Children's Protective Services and Mr. Pete Urbani, Jr., Vice-Chairman of the aforementioned agency's Board, to discuss local procedures following the Sims (sic) Judgment (Amended). Of greatest concern was the interpretation of holding and *"ex parte* presentation to a judicial authority beyond the very day of seizure (of a child)".

After much discussion, it was the feeling of the District Judges that the following procedures will be adopted by this County and will adequately follow the Sims case:

a) If a child is taken into custody prior to 5 P.M. on any working Friday and if the Protective Services agency is confronted by the child's parents before 5 P.M., a District Judge will have an *ex parte* hearing at that time, otherwise a District Judge will make himself available for an *ex parte* hearing on the following working day.

b) If a child is taken into custody after working hours or during a weekend or holiday and the parents strenuously demand the return of their child, an *ex parte* hearing will be held if a District Judge can be contacted.

c) We do not only agree that it is unnecessary for a District Judge to be "on call" for these *ex parte* hearings but further advised Mr. Davis and Mr. Urbani that it would not be wise for a staff member to return a child to a dangerous situation after the passage of 24 hours.

On a closing note, we strongly feel that any applicable law arising out of the Sims case is better left with the jurisdiction of the District Courts rather than in the hands of individuals.

Very truly yours,

_____

Judge-56th Judicial District

HG/jm

cc: The Honorable William Decker
Judge 122nd District Court
Galveston County Courthouse
Galveston, Texas 77550

The Honorable Don Morgan
Judge 212th District Court
Galveston County Courthouse
Galveston, Texas 77550

The Honorable Ed Harris
Judge 10th District Court
Galveston County Courthouse
Galveston, Texas 77550

C.J. Carl, Assistant Attorney General
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711

APPENDIX I

APPLICABLE PROVISIONS OF TEXAS FAMILY CODE

CHAPTER 11
CHAPTER 14
CHAPTER 15
CHAPTER 17
CHAPTER 34
CHAPTER 35

CHAPTER 11. GENERAL PROVISIONS

Section 11.01. Definitions
Section 11.02. Suit Authorized; Scope of Suit
Section 11.03 Who May Bring Suit
Section 11.04. Venue
Section 11.05. Continuing Jurisdiction
Section 11.051. Acquiring Jurisdiction Over Nonresident
Section 11.06. Transfer of Proceedings
Section 11.07. Commencement of Suit and Petition for Further Remedy
Section 11.071. Identification of Court of Continuing Jurisdiction
Section 11.08 Contents of Petition
Section 11.09. Citation and Notice
Section 11.10. Guardian Ad Litem
Section 11.11. Temporary Orders
Section 11.12. Social Study
Section 11.13. Jury
Section 11.14. Hearing
Section 11.15. Findings
Section 11.16. Copies of Decree
Section 11.17. Central Record File
Section 11.18. Costs
Section 11.19. Appeal
Section 11.20. Representation of Department

Section 11.01. Definitions. As used in this Subtitle and Subtitle C of this title, unless the context requires a different definition:

(1) *Child or minor* means a person under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes. *Adult* means any other person.

(2) *Court* means the district court, court of domestic relations, juvenile court having the jurisdiction of a district court, or other court expressly given jurisdiction of a suit under this subtitle.

(3) *Parent* means the mother, a man as to whom the child is legitimate, or an adoptive mother or father, but does not include a parent as to whom the parent-child relationship has been terminated.

(4) *Parent-child relationship* means the rights, privileges, duties and powers existing between a parent and child as provided by Section 12.04 of this code.

(5) *Suit affecting the parent-child relationship* means a suit brought under this subtitle in which the appointment of a managing conservator or a possessory conservator, access to or support of a child, or establishment or termination of the parent-child relationship is sought.

(6) *Managing conservatorship* means the relationship between a child and a managing conservator appointed by court order or designated in an affidavit of relinquishment under this subtitle.

(7) *Authorized agency* means a public social agency authorized to care for children or to place children for adoption, or a private association, corporation, or person approved for that purpose by the State Department of Public Welfare through a license, certification, or other means.

(8) *Illegitimate child* means a child who is not and has never been the legitimate child of a man and whose parent-child relationship with its natural mother has not been terminated by a court decree.

Section 11.02. Suit Authorized; Scope of Suit. (a) A suit affecting the parent-child relationship may be brought as provided in this subtitle.

(b) One or more matters covered by this subtitle may be determined in the suit. The court, on its own motion, may require the parties to replead in order that any issue affecting the parent-child relationship may be determined in the suit.

Section 11.03. Who May Bring Suit. A suit affecting the parent-child relationship may be brought by any person with an interest in the child, including the child (through a representative authorized by the court), any agency of the state or of a political subdivision of the state, and any authorized agency.

Section 11.04. Venue. (a) Except as otherwise provided in this subtitle, a suit affecting the parent-child relationship shall be brought in the county where the child resides.

(b) A suit in which adoption is sought may be brought in the county where the child resides, the petitioners reside, or if the child is placed for adoption by an authorized agency, in the county where the authorized agency is located.

(c) A child resides in the county where his parents (or parent if only one parent is living) reside, except that:

(1) if a managing conservator has been appointed by court order or designated in an affidavit of relinquishment, or if a custodian for the child has been appointed by order of a court before January 1, 1974, the child resides in the county where the managing conservator or custodian resides;

(2) if a guardian of the person has been appointed by order of a county or probate court and a managing

conservator has not been appointed, the child resides in the county where the guardian of the person resides;

(3) if the parents of the child do not reside in the same county and neither a managing conservator nor a guardian of the person has been appointed, the child resides in the county where the parent having care and control of the child resides;

(4) if the child is under the care and control of an adult other than a parent and (A) neither a managing conservator nor a guardian of the person has been appointed or (B) the whereabouts of the managing conservator or the guardian of the person is unknown or (C) the person whose residence determines the residence of the child under this section has left the child under the care and control of the adult, the child resides where the adult having care and control of the child resides;

(5) if a guardian or custodian of the child has been appointed by order of a court of another state or nation, the child resides in the county where the guardian or custodian resides; or

(6) if it appears that the child is not under the care and control of an adult, the child resides where he is found.

Section 11.05. Continuing Jurisdiction. (a) Except as provided in Subsections (b), (c), and (d) of this section, when a court acquires jurisdiction of a suit affecting the parent-child relationship, that court retains continuing jurisdiction of all matters provided for under this subtitle in connection with the child, and no other court has jurisdiction of a suit affecting the parent-child relationship with regard to that child except on transfer as provided in Section 11.06 of this code.

(b) A final decree of adoption ends a court's continuing jurisdiction over the child, and any subsequent suit affecting the child shall be commenced as though the child had not been the subject of a suit for adoption or any other suit affecting the parent-child relationship prior to the adoption.

(c) A court shall have jurisdiction over a suit affecting the parent-child relationship if it has been, correctly or incorrectly, informed by the State Department of Public Welfare that the child has not been the subject of a suit affecting the parent-child relationship and the petition states that no other court has continuing jurisdiction over the child.

(d) (1) In a suit in which a determination of paternity is sought, except as provided in paragraph (2), the jurisdiction of the court terminates when an order dismissing with prejudice a suit under Chapter 13 becomes final, or when an order under Subsection (b), Section 13.08, declaring that the alleged father is not the father of the child becomes final, or when an order denying voluntary legitimation under Section 13.10 becomes final.

(2) The jurisdiction of the court does not terminate if the child was subject to the jurisdiction of the court or some other court in a suit affecting the parent-child relationship prior to the commencement of the suit to determine paternity.

Section 11.051. Acquiring Jurisdiction Over Nonresident. In a suit affecting the parent-child relationship, the court may exercise personal jurisdiction over a person on whom service of citation is required or over the person's personal representative, although the person is not a resident of domiciliary of this state, if:

(1) the child was conceived in this state and the person on whom service is required is a parent or an alleged or probable father of the child;

(2) the child resides in this state, as defined by Section 11.04 of this code, as a result of the acts or directives or with the approval of the person on whom service is required;

(3) the person on whom service is required has resided with the child in this state; or

(4) notwithstanding Subdivisions (1), (2), or (3) above, there is any basis consistent with the constitutions of this state or the United States for the exercise of the personal jurisdiction.

Section 11.06. Transfer of Proceedings. (a) If venue is improperly laid in the court in which a suit affecting the parent-child relationship is filed, and no other court has continuing jurisdiction of the suit, the court, on the timely motion of any party other than the petitioner, and on a showing that venue is proper in another county, shall transfer the proceeding to the county where venue is proper.

(b) If a petition or a motion to modify a decree is filed in a court having continuing jurisdiction of the suit, the court, on the timely motion of any party, and on a showing that venue is proper in another county or that a suit for dissolution of marriage has been filed in another court, shall transfer the proceeding to the county where venue is proper or to the court where the suit for dissolution of the marriage is pending. However, if the basis of the motion is that the child resides in another county, the court may deny the motion if it is shown that the child has not resided in that county for at least six months. In computing the period of time during which the child has resided in that county, the court shall not

require that the period of residence be continuous and uninterrupted but shall look to the child's principal residence during the said six-months period.

(c) For the convenience of the parties and witnesses and in the interest of justice, the court, on the timely motion of any party, may transfer the proceeding to a proper court in any other county in the state.

(d) If a court has continuing jurisdiction over a child but another court has acquired jurisdiction over the child in a suit affecting the parent-child relationship under Section 11.05(c) of this code, the court previously having jurisdiction over the child, on a motion of any party or on the court's motion, shall transfer the proceeding to the court which has acquired jurisdiction under Section 11.05(c) of this code.

(e) A motion under Subsection (a), (b), or (c) of this section must be made on or before the day on which answer is required.

(f) Each party to the suit is entitled to 10 days' notice and a hearing on the transfer which shall be held within 30 days after the day of filing the motion to transfer. Only evidence pertaining to venue shall be taken at the hearing. An order transferring or refusing to transfer the proceeding is not appealable.

(g) The court transferring a proceeding shall send to the proper court in the county to which transfer is made the complete files in all matters affecting the child, certified copies of all entries in the minutes, and a certified copy of any decree of dissolution of marriage issued in a suit joined with the suit affecting the parent-child relationship. If the transferring court retains jurisdiction of another child who was the subject of the suit, the court shall send a copy of the complete files to the court to which the transfer is made and shall keep the original files.

(h) A court to which a transfer is made becomes the court of continuing jurisdiction, and all proceedings in the suit are continued as if it were brought there originally.

Section 11.07. Commencement of Suit and Petition for Further Remedy. (a) A suit affecting the parent-child relationship shall be commenced by the filing of a petition as provided in this chapter.

(b) Except in a motion to modify as provided in Section 14.08 of this code, a request for further action concerning a child who is the subject of a suit affecting the parent-child relationship and who is under the jurisdiction of a court with continuing jurisdiction shall be initiated by the filing of a petition as provided in this chapter.

(c) On the receipt of a petition requesting further action concerning the child in the court of continuing jurisdiction, the clerk shall file the petition and all other papers relating to the request for further action in the file of the suit affecting the parent-child relationship under the same docket number as the prior proceeding.

Section 11.071. Identification of Court of Continuing Jurisdiction. (a) The petitioner or the Court shall request from the State Department of Public Welfare identification of the court that last had jurisdiction of the child in a suit affecting the parent-child relationship unless:

(1) the petition alleges that no court has continuing jurisdiction of the child, and the issue is not disputed by the pleadings; or

(2) the petition alleges that the court in which the suit, petition for further remedy, or motion to modify has been filed has acquired and retains continuing

jurisdiction of the child as the result of a prior proceeding, and the issue is not disputed by the pleadings.

(b) The department shall, on the written request of the court, an attorney, or any party, identify the court that last had jurisdiction of the child in a suit affecting the parent-child relationship and give the docket number of the suit, or state that the child has not been the subject of a suit affecting the parent-child relationship. The child shall be identified in the request by name, birthdate, and place of birth. The department shall transmit this information within 10 days after the day the request is received.

(c) If a request for information from the department relating to the identity of the court having continuing jurisdiction of the child has been made pursuant to Subection (a), no final order, except an order of dismissal, shall be entered until the information is filed with the court. If a final order is entered in the absence of the filing of the information from the department, the order is voidable on a showing that a court other than the court that entered the order had continuing jurisdiction.

(d) If the court in which a petition in a suit affecting the parent-child relationship is filed determines that another court has continuing jurisdiction of the child, the court in which the petition is filed shall dismiss the suit without prejudice.

Section 11.08. Contents of Petition. (a) The petition and all other documents in the proceeding brought under this subtitle (except a suit for adoption of an adult) shall be entitled *In the interest of* _____, *a child.* In a suit in which adoption of a child is sought, the style shall be, *In the interest of a child.*

(b) The petition must include:

(1) a statement that the court in which the petition is filed has continuing jurisdiction or that no court has continuing jurisdiction of the suit;

(2) the name, sex, place and date of birth, and place of residence of the child, except that if adoption of a child is sought, the name of the child may be omitted;

(3) the full name, age, and place of residence of the petitioner and his relationship to the child or the fact that no relationship exists;

(4) the names, ages, and place of residence of the parents, except in a suit in which adoption is sought;

(5) the name and place of residence of the managing conservator, if any, or the child's custodian, if any, appointed by an order of the court before January 1, 1974, or by order of a court of another state or nation;

(6) the names and places of residence of the guardians of the person and estate of the child, if any;

(7) the names and places of residence of possessory conservators or other persons, if any, having access to the child under an order of the court;

(8) in a suit in which termination of the parent-child relationship between an illegitimate child and its mother is sought, the name and place of residence of the alleged father or probable father of the child or a statement that the identity of the father of the child is unknown;

(9) a full description and statement of value of all property owned or possessed by the child;

(10) a statement describing what action the court is requested to make concerning the child and the statutory grounds on which the request is made; and

(11) any other information required by other provisions of this subtitle.

(c) The petition and other matters in a suit in which a determination of paternity is sought, if the petitioner is a person other than the alleged father of the child, are confidential, and the district clerk and employees of the clerk may not disclose to any person other than the court, the department, or a party to the suit any matter concerning the suit. This subsection does not apply if and when the suit is set for trial under Subsection (b) of Section 13.05 of this code.

Section 11.09. Citation and Notice. (a) Except as provided in Subsection (b) of this section, the following persons are entitled to service of citation on the filing of a petition in a suit affecting the parent-child relationship:

(1) the managing conservator, if any;

(2) possessory conservators, if any;

(3) persons, if any, having access to the child under an order of the court;

(4) persons, if any required by law or by order of a court to provide for the support of a child;

(5) the guardian of the person of the child, if any;

(6) the guardian of the estate of the child, if any;

(7) each parent as to whom the parent-child relationship has not been terminated or process has not been waived under Section 15.03(c)(2) of this code;

(8) in a suit in which termination of the parent-child relationship between an illegitimate child and its mother is sought, the alleged father or probable father, unless there is attached to the petition an affidavit of

waiver of interest in a child executed by the alleged father or probable father as provided in Section 15.041 of this code or unless the petition states that the identity of the father is unknown; and

(9) in a suit to determine the paternity of a child, the alleged father, unless the alleged father is a petitioner.

(b) Service of citation may be given to any other person who has or who may assert an interest in the child and may be given to the unknown father of an illegitimate child.

(c) (i) Except in a suit in which termination of the parent-child relationship is sought, citation on the filing of a petition in a suit affecting the parent-child relationship or notice of a hearing shall be issued and served as in other civil cases except that citation or notice may be given by registered or certified mail, return receipt requested. In such cases, the clerk shall mail the citation and a copy of the petition to the person so notified marked for delivery to the addressee only. The filing of the returned receipt indicating delivery by registered or certified mail to the proper person shall be sufficient proof of the fact of service.

(ii) In a suit in which termination of the parent-child relationship is sought, citation on the filing of a petition or notice of a hearing shall be issued and served as in other civil cases.

(d) Citation may be given by publication as in other civil cases to persons entitled to service of citation who cannot be notified by personal service or registered or certified mail and to persons whose names are unknown. The notice shall be published one time. If the name of a person entitled to service of citation is unknown, the notice to be published shall be addressed to "All Whom It May Concern." One or more causes to be heard on a

certain day may be included in one notice and hearings may be continued from time to time without further notice.

(e) Notice by publication shall be sufficient if given in substantially the following form:

"STATE OF TEXAS

To (names of persons to be served with citation), and to all whom it may concern (if the name of any person to be served with citation is unknown), Respondent(s),

GREETINGS:

"YOU ARE HEREBY COMMANDED to appear and answer before the Honorable District Court, _____Judicial District, _____ County, Texas, at the Courthouse of said county in _____, Texas, at or before 10 o'clock a.m. of the Monday next after the expiration of 20 days from the date of service of this citation, then and there to answer the petition of _____, Petitioner, filed in said Court on the ___ day of _____, 19___, against _____, Respondent(s), and said suit being number _____ on the docket of said Court, and entitled 'In the interest of _____, a child,' the nature of which suit is a request to (statement of relief sought, e.g., 'terminate the parent-child relationship'). Said child was born the ___ day of _____, 19___, in (place of birth).

"The court has authority in this suit to enter any judgment or decree in the child's interest which will be binding upon you, including the termination of the parent-child relationship, the determination of paternity and the appointment of a conservator with authority to consent to the child's adoption.

"Issued and given under my hand and seal of said Court at _____, Texas, this the ___ day of _____, 19___.

.....

Clerk of the District Court of
_____ County, Texas.

By _____, Deputy."

Section 11.10. Guardian Ad Litem. (a) In any suit in which termination of the parent-child relationship is sought, the court shall appoint a guardian ad litem to represent the interests of the child, unless the child is a petitioner or unless an attorney ad litem has been appointed for the child or unless the court finds that the interests of the child will be represented adequately by a party to the suit and are not adverse to that party. In any other suit under this subtitle, the court may appoint a guardian ad litem. The managing conservator may be appointed guardian ad litem if he is not a parent of the child or a person petitioning for adoption of the child and if he has no personal interest in the suit.

(b) A guardian ad litem shall be appointed to represent any other person entitled to service of citation under the provisions of Section 11.09 of this code if the person is incompetent or a child, unless the person has executed an affidavit of relinquishment of parental rights or an affidavit of waiver of interest in child containing a waiver of service of citation.

(c) The court may appoint an attorney for any party in a case in which it deems representation necessary to protect the interests of the child who is the subject matter of the suit.

Section 11.11. Temporary Orders. (a) In a suit affecting the parent-child relationship, the court may

make any temporary order for the safety and welfare of the child, including but not limited to an order:

(1) for the temporary conservatorship of the child;

(2) for the temporary support of the child;

(3) restraining any party from molesting or disturbing the peace of the child or another party;

(4) taking the child into the possession of the court or of a person designated by the court; or

(5) attaching the body of the child or prohibiting a person from removing the child beyond the jurisdiction of the court as under a writ of ne exeat.

(b) Temporary orders under this section are governed by the rules governing temporary restraining orders and temporary injunctions in civil cases generally.

(c) In a suit under this subtitle the court may dispense with the necessity of a bond in connection with temporary orders in behalf of the child.

Section 11.12. Social Study. (a) In a suit affecting the parent-child relationship, the court may order the preparation of a social study into the circumstances and condition of the child and of the home of any person seeking managing conservatorship or possession of the child.

(b) The social study may be made by any state agency, including the State Department of Public Welfare, or any private agency, or any person appointed by the court. If an authorized agency is the managing conservator, the social study shall be made by the authorized agency. The social study shall be made according to criteria established by the court.

(c) The agency or person making the social study shall file its findings and conclusions with the court on a date set by the court. The report shall be made a part of the record of the suit; however, the disclosure of its contents to the jury is subject to the rules of evidence.

Section 11.13. Jury. (a) In a suit affecting the parent-child relationship, except a suit in which adoption is sought, any party may demand a jury trial.

(b) The court may not enter a decree that contravenes the verdict of the jury, except with respect to the issues of the specific terms and conditions of access to the child, support of the child, and the rights, privileges, duties, and powers of conservators, on which issues the verdict, if any, is advisory only.

Section 11.14. Hearing. (a) Except as otherwise provided in this subtitle, proceedings shall be as in civil cases generally.

(b) On the agreement of all parties to the suit, the court may limit attendance at the hearing to only those persons who have a direct interest in the suit or in the work of the court.

(c) The court may compel the attendance of witnesses necessary for the proper disposition of the petition, including a representative of the agency making the social study, who may be compelled to testify.

(d) A record shall be made as in civil cases generally unless waived by the parties with the consent of the court.

(e) The rules of evidence apply as in other civil cases.

(f) When information contained in a report, study, or examination is before the court, the person making the report, study, or examination is subject to both direct

examination and cross-examination as in civil cases generally.

(g) The hearing may be adjourned from time to time.

Section 11.15. Findings. The court's findings shall be based on a preponderance of the evidence under rules generally applicable to civil cases.

Section 11.16. Copies of Decree. Copies of a decree of termination or adoption issued under Section 15.05 or Section 16.08 of this code are not required to be mailed to parties as provided in Rules 119a and 239a, Texas Rules of Civil Procedure.

Section 11.17. Central Record File. (a) Except as provided by Subsection (b) of this section, the clerk of each court having jurisdiction of suits affecting the parent-child relationship shall transmit to the State Department of Public Welfare a copy of the decree entered in each suit affecting the parent-child relationship, together with the name and all prior names, birthdate, and place of birth of the child. The department shall maintain these records in a central file according to the name, birthdate, and place of birth of the child, the court which rendered the decree, and docket number of the suit.

(b) On entry of a decree of adoption or on the termination of jurisdiction of a court as provided in Section 11.05(d) of this code, the clerk of the court at petitioner's request shall transmit to the department a complete file in the case, including all pleadings, papers, studies, and records in the suit other than the minutes of the court. The clerk of the court, on entry of a decree of adoption, shall send to the department a certified copy of the petition and decree of adoption. The clerk may not transmit to the department pleadings, papers, studies, and records relating to a suit for divorce

or annulment or to declare a marriage void. When the department receives the complete file or petition and decree of adoption, it shall close the records concerning that child; and except for statistical purposes, it shall not disclose any information concerning the prior proceedings affecting the child. Except as provided in Subsection (d) of this section, any subsequent inquiries concerning the child shall be handled as though the child had not been previously the subject of a suit affecting the parent-child relationship. On the receipt of additional records concerning a child who has been the subject of a suit affecting the parent-child relationship in which the records have been closed as required in this section, a new file shall be made and maintained as other records required by this section.

(c) The department may charge a reasonable fee to cover the cost of determining and sending information concerning the identity of courts with continuing jurisdiction. The receipts shall be deposited in any financial institution as determined by the commissioner of welfare and withdrawn as necessary for the sole purpose of operating and maintaining the central record file.

(d) The records concerning a child maintained by the district clerk after entry of a decree of adoption, and all the records required to be maintained by the department are confidential, and no person is entitled to access to or information from these records except as provided by this information from these records except as provided by this subtitle or on an order of the court which issued the decree of a district court of Travis County for good cause.

(e) The department may utilize microfilm or other suitable means for maintaining the central record file. A certified reproduction of a document maintained by

the department is admissible in evidence as the original document.

(f) The court, on the motion of a party or on the court's own motion, may order the sealing of the file, the minutes of the court, or both, in a proceeding in which adoption or termination was sought. This subsection does not relieve the clerk from the duty to transmit files or petitions and decrees of adoption to the department as required by Subsection (b) of this section.

Section 11.18. Costs. (a) In any proceeding under this subtitle, the court may award costs as in other civil cases. Reasonable attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order for fees in his own name.

(b) No separate filing fee is required in any suit affecting the parent-child relationship joined with a suit for dissolution of marriage under Title 1 of this code. Additional filing fees shall not be required if more than one form of relief is requested in a suit affecting the parent-child relationship.

Section 11.19. Appeal. (a) Appeals from orders, decrees, or judgments entered in suits affecting the parent-child relationship, when allowed under this section or under other provisions of law, shall be as in civil cases generally.

(b) An appeal may be taken by any party to a suit affecting the parent-child relationship from an order, decree, or judgment:

(1) entered under Chapter 13 of this code;

(2) entered under Chapter 14 of this code appointing or refusing to appoint a managing conservator; appointing or refusing to appoint a possessory

conservator; ordering or refusing to order payments for support of a child; or modifying any such order previously entered;

(3) entered under Chapter 15 of this code terminating or refusing to terminate the parent-child relationship; or appointing a managing conservator;

(4) entered under Chapter 16 of this code granting or refusing an adoption.

(c) An appeal from an order, judgment, or decree, with or without a supersedeas bond, does not suspend the order, decree, or judgment unless suspension is ordered by the court entering the order, decree, or judgment. The appellate court, on a proper showing, may permit the order, decree, or judgment to be suspended.

(d) On the motion of the parties or on its own motion the appellate court in its opinion may identify the parties by fictitious names or by their initials only.

Section 11.20. Representation of Department. In any suit brought under subtitle A or C of this title in which the State Department of Public Welfare is a party, the department shall be represented in the trial court by the prosecuting attorney who represents the state in criminal cases in the district or county court of the county where the suit is filed or transferred or by the attorney general.

CHAPTER 14. CONSERVATORSHIP, POSSESSION, AND SUPPORT OF CHILDREN

Section 14.01. Court Appointment of Managing Conservator
Section 14.02. Rights, Privileges, Duties, and Powers of Managing Conservator
Section 14.03. Possession of and Access to Child
Section 14.04. Rights, Privileges, Duties, and Powers of Possessory Conservator
Section 14.05. Support of Child
Section 14.06. Agreements Concerning Conservatorship
Section 14.07. Best Interest of Child
Section 14.08. Modification of Order
Section 14.09. Enforcement of Order
Section 14.10. Habeas Corpus

Section 14.01. Court Appointment of Managing Conservator. (a) In any suit affecting the parent-child relationship, the court may appoint a managing conservator, who must be a suitable, competent adult, or a parent, or an authorized agency. If the court finds that the parents are or will be separated, the court shall appoint a managing conservator.

(b) A parent shall be appointed managing conservator of the child unless the court finds that appointment of the parent would not be in the best interest of the child. In determining which parent to appoint as managing conservator, the court shall consider the qualifications of the respective parents without regard to the sex of the parent.

(c) A qualified person or authorized agency designated managing conservator of the child in an unrevoked or irrevocable affidavit or relinquishment of parental rights executed pursuant to Section 15.03 of this code shall be appointed managing conservator of the child unless the court finds that appointment of the person or agency would not be in the best interest of the child.

(d) A person appointed managing conservator who is not a parent of the child shall each 12 months after his appointment file with the court a report of facts concerning the child's welfare, including his whereabouts and physical condition. The report may not be admitted in evidence in any subsequent suit affecting the parent-child relationship.

Section 14.02. Rights, Privileges, Duties, and Powers of Managing Conservator. (a) Except as provided in Subsection (d) of this section, a parent appointed managing conservator of the child retains all the rights, privileges, duties, and powers of a parent to the exclusion of the other parent, subject to the rights, privileges, duties, and powers of a possessory conservator as provided in Section 14.04 of this code and to any limitation imposed by court order in allowing access to the child.

(b) A managing conservator who is not the parent of the child has the following rights, privileges, duties, and powers, subject to the rights, privileges, duties, and powers of a possessory conservator as provided in Section 14.04 of this code and to any limitation imposed by court order in allowing access to the child:

(1) the right to have physical possession of the child and to establish its legal domicile;

(2) the duty of care, control, protection, moral and

religious training, and reasonable discipline of the child;

(3) the duty to provide the child with clothing, food, shelter, and education;

(4) the right to the services and earnings of the child;

(5) the power to consent to marriage, to enlistment in the armed forces of the United States, and to medical, psychiatric, and surgical treatment;

(6) the power to represent the child in legal action and to make other decisions of substatial legal significance concerning the child;

(7) the power to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child; and

(8) if the parent-child relationship has been terminated with respect to the parents, or only living parent, or if there is no living parent, the power to consent to the adoption of the child and to make any other decision concerning the child that a parent could make.

(c) A person or authorized agency designated managing conservator of a child in an affidavit of relinquishment executed pursuant to Section 15.03 of this code shall have the rights, privileges, duties, and powers given by Section 14.04 of this code to a possessory conservator until such time as these rights, privileges, duties, and powers are modified or terminated by court order.

(d) The appointment of a managing conservator does not create, rescind, or otherwise alter a right to inherit as established by law or as modified under Chapter 15 of this code.

Section 14.03. Possession of and Access to Child. (a) If a managing conservator is appointed, the court may appoint one or more possessory conservators and set the time and conditions for possession of or access to the child by the possessory conservators and others.

(b) On the appointment of a possessory conservator, the court shall prescribe the rights, privileges, duties, and powers of the possessory conservator.

(c) The court may not deny possession of or access to a child to either or both parents unless it finds that parental possession or access is not in the best interest of the child and that parental possession or access would endanger the physical or emotional welfare of the child.

(d) If the court finds that it is in the best interests of the child as provided in Section 14.07 of this code, the court may grant reasonable access rights to either the maternal or paternal grandparents of the child; and to either the natural maternal or paternal grandparents of a child whose parent-child relationship has been terminated or who has been adopted before or after the effective date of this code. Such relief shall not be granted unless one of the child's legal parents at the time the relief is requested is the child's natural parent. The court may issue any necessary orders to enforce said decree.

Section 14.04. Rights, Privileges, Duties, and Powers of Possessory Conservator. A possessory conservator has the following rights, privileges, duties, and powers during the period of possession, subject to any limitations expressed in the decree:

(1) the duty of care, control, protection, and reasonable discipline of the child;

(2) the duty to provide the child with clothing, food, and shelter;

(3) the power to consent to medical and surgical treatment during an emergency involving an immediate danger to the health and safety of the child; and

(4) any other right, privilege, duty, or power of a managing conservator expressly granted in the decree awarding possession of the child.

Section 14.05. Support of Child. (a) The court may order either or both parents to make periodic payments or a lump-sum payment, or both, for the support of the child until he is 18 years of age in the manner and to the persons specified by the court in the decree. In addition, the court may order a parent obligated to support a child to set aside property to be administered for the support of the child in the manner and by the persons specified by the court in the decree.

(b) If the court finds that the child, whether institutionalized or not, requires continuous care and personal supervision because of a mental or physical disability and will not be able to support himself, the court may order that payments for the support of the child shall be continued after the 18th birthday and extended for an indefinite period.

(c) The court may order the trustees of a spendthrift or other trust to make disbursements for the support of the child to the extent the trustees are required to make payments to a beneficiary who is required to make support payments under this section. If disbursement of the assets of the trust is discretionary in the trustees, the court may order payments for the benefit of the child from the income of the trust, but not from the principal.

(d) Unless otherwise agreed to in writing or expressly provided in the decree, provisions for the support of a child are terminated by the marriage of the child, the

removal of the child's disabilities for general purposes, or the death of a parent obligated to support the child.

Section 14.06. Agreements Concerning Conservatorship. (a) To promote the amicable settlement of disputes between the parties to a suit under this chapter, the parties may enter into a written agreement containing provisions for conservatorship and support of the child.

(b) If the court finds the agreement is not in the child's best interest the court may request the parties to submit a revised agreement or the court may make orders for the conservatorship and support of the child.

(c) If the court finds that the agreement is in the child's best interest, its terms shall be set forth in the decree and the parties shall be ordered to perform them.

(d) Terms of the agreement set forth in the decree may be enforced by all remedies available for enforcement of a judgment, including contempt, but are not enforceable as contract terms unless the agreement so provides.

Section 14.07. Best Interest of Child. (a) The best interest of the child shall always be the primary consideration of the court in determining questions of managing conservatorship, possession, and support of and access to the child. If the child is 14 years of age or older, he may, by writing filed with the court, choose the managing conservator, subject to the approval of the court.

(b) In determining the best interest of the child, the court shall consider the circumstances of the parents. In the event of the death of the parents, the grandparents may be considered but such consideration shall not alter or diminish the discretionary power of the court.

(c) In a nonjury trial the court may interview the child in chambers to ascertain the child's wishes as to his conservator. Upon the application of any party and when the issue of managing conservatorship is contested, the court shall confer with a child 12 years of age or older and may confer with a child under 12 years of age, but in either event the results of such interview shall not alter or diminish the discretionary power of the court. The court may permit counsel to be present at the interview. On the motion of a party or on the court's own motion, the court shall cause a record of the interview to be made when the child is 12 years of age or older, which record of the interview shall be made part of the record in the case.

Section 14.08. Modification of Order. (a) A court order or the portion of a decree that provides for the support of a child or the appointment of a conservator or that sets the terms and conditions of conservatorship for, support for or, access to a child may be modified only by the filing of a motion in the court having jurisdiction of the suit affecting the parent-child relationship. Any party affected by the order or the portion of the decree to be modified may file the motion.

(b) Each party whose rights, privileges, duties, or powers may be affected by the motion is entitled to at least 30 days' notice of a hearing on the motion to modify.

(c) After a hearing, the court may modify an order or portion of a decree that:

(1) designates a managing conservator if the circumstances of the child or parent have so materially and substantially changed since the entry of the order or decree to be modified that the retention of the present managing conservator would be injurious to the welfare of the child and that the appointment of the new

managing conservator would be a positive improvement for the child; or

(2) provides for the support of a child, sets the terms and conditions for access to or possession of a child, or prescribes the relative rights, privileges, duties,and powers of conservators if the circumstances of the child or a person affected by the order or portion of the decree to be modified have materially and substantially changed since the entry of the order or decree; except that an order providing for the support of a child may be modified only as to obligations accruing subsequent to the motion to modify.

(d) If the motion is filed for the purpose of changing the designation of the managing conservator and is filed within one year after the date of issuance of the order or decree to be modified, there shall be attached to the motion an affidavit executed by the person making the motion. The affidavit must contain at least one of the following allegations along with the supportive facts:

(1) that the child's present environment may endanger his physical health or significantly impair his emotional development; or

(2) that the managing conservator is the person seeking the modification or consents to the modification, and the modification is in the best interest of the child.

(e) On the filing of a motion to which the provisions of Subsection (d) of this section apply, the court shall deny the motion and refuse to schedule a hearing unless the court determines, on the basis of the affidavit, that adequate facts to support an allegation listed in Subdivision (1) or (2) of Subsection (d) of this section are stated in the affidavit. If the court determines that the facts stated are adequate to support an allegation, a time and place for the hearing shall be set.

Section 14.09. Enforcement of Order. (a) Any order of the court may be enforced by contempt.

(b) A court may enforce an order for support as provided in Rule 308A of the Texas Rules of Civil Procedure or any subsequent version of the rule promulgated by the supreme court.

(c) On the motion of any party entitled to receive payments for the benefit of a child, the court may render judgment against a defaulting party for any amount unpaid and owing after 10 days' notice to the defaulting party of his failure or refusal to carry out the terms of the order. The judgment may be enforced by any means available for the enforcement of judgments for debts.

(d) A parent may be compelled to testify fully in regard to his ability to support the child.

Section 14.10. Habeas Corpus. (a) If the right to possession of a child is presently governed by a court order, the court in a habeas corpus proceeding involving the right to possession of the child shall compel return of the child to the relator if and only if it finds that the relator is presently entitled to possession by virtue of the court order.

(b) The court shall disregard any cross action or motion pending for modification of the decree determining managing conservatorship, possession, or support of or access to the child unless it finds that:

(1) the previous order was granted by a court that did not have jurisdiction of the parties; or

(2) the child has not been in the relator's possession and control for at least 6 months immediately preceding the filing of the petition for the writ.

(c) The court may issue any appropriate temporary order if there is a serious immediate question concerning the welfare of the child.

(d) While in this state for the sole purpose of compelling the return of a child through a habeas corpus proceeding, the relator is not amenable to civil process and is not subject to the jurisdiction of any civil court except the court in which the writ is pending and in that court only for the purpose of prosecuting the writ.

(e) If the right to possession of a child is not governed by a court order, the court in a habeas corpus proceeding involving the right of possession of the child shall compel return of the child to the relator if, and only if, it finds that the relator has a superior right to possession of the child by virtue of the rights, privileges, duties, and powers of a parent as set forth in Section 12.04 of this code.

(f) The court shall disregard any motion for temporary or permanent adjudication relating to the possession of the child in a habeas corpus proceeding brought under Subsection (e) of this section unless at the time of the hearing an action is pending under this subtitle, in which case the court may proceed to issue any temporary order as provided by Section 11.11 of this code.

CHAPTER 15. TERMINATION OF THE PARENT-CHILD RELATIONSHIP

Section 15.01.	Termination When Parent Is Petitioner
Section 15.02.	Involuntary Termination of Parental Rights
Section 15.021.	Filing of Petition to Terminate Before Birth
Section 15.03.	Affidavit of Relinquishment of Parental Rights
Section 15.04.	Affidavit of Status of Child
Section 15.041.	Affidavit of Waiver of Interest in Child
Section 15.05.	Decree
Section 15.06.	Dismissal of Petition
Section 15.07.	Effect of Decree.

Section 15.01. Termination When Parent is Petitioner. A parent may file a petition requesting termination of the parent-child relationship with his child. The petition may be granted if the court finds that termination is in the best interest of the child.

Section 15.02. Involuntary Termination of Parental Rights. A petition requesting termination of the parent-child relationship with respect to a parent who is not the petitioner may be granted if the court finds that:

(1) the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return; or

(B) voluntarily left the child alone or in the possession of another not the parent without expressing

an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months; or

(C) voluntarily left the child alone or in the possession of another not the parent and, although expressing an intent to return, failed to do so without providing adequate support of the child and remained away for a period of at least six months; or

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child; or

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child; or

(F) failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition; or

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence; or

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth; or

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Section 34.05 of this code; or

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Texas Education Code; or

(ii) the child's absence from his home without the consent of his parents or guardian for a substantial length of time or without the intent to return; or

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by Section 15.03 of this code; and in addition, the court further finds that

(2) termination is in the best interest of the child.

Section 15.021. Filing of Petition to Terminate Before Birth. A petition in a suit affecting the parent-child relationship which requests the termination of the parent-child relationship with respect to either or both parents may be filed before the birth of the child and after the first trimester of the mother's pregnancy. If the petition is filed before the birth of the child, no hearing on the termination may be held nor may orders other than temporary orders be issued until the child is at least five days old. If the petition is filed before the birth of the child, the term "unborn child" shall be substituted for the name of the child in all records and documents required by this title that are filed before the birth of the child. After the birth of the child, the name of the child shall be entered in the record and used in subsequent proceedings other than an adoption.

Section 15.03. Affidavit of Relinquishment of Parental Rights. (a) An affidavit for voluntary relinquishment of parental rights must be signed after the birth of the child by the parent, whether or not a minor, whose parental rights are to be relinquished, witnessed by two credible persons, and verified before any person authorized to take oaths.

(b) The affidavit must contain:

(1) the name, address, and age of the parent whose parental rights are being relinquished;

(2) the name, age, and birthdate of the child;

(3) the names and addresses of the guardians of the person and estate of the child, if any;

(4) a statement that the affiant is or is not presently obligated by court order to make payments for the support of the child;

(5) a full description and statement of value of all property owned or possessed by the child;

(6) allegations that termination of the parent-child relationship is in the best interest of the child;

(7) one of the following, as applicable:

(A) the name and address of the other parent;

(B) a statement that the parental rights of the other parent have been terminated by death or court order; or

(C) a statement that the child is not the legitimate child of the father and that an affidavit of status of child has been executed as provided by Section 15.04 of this code;

(8) a statement that the parent has been informed of his parental rights, powers, duties, and privileges; and

(9) a statement that the relinquishment is revocable, or that the relinquishment is irrevocable for a stated period of time.

(c) The affidavit may contain:

(1) a designation of any qualified person, the State Department of Public Welfare, or any authorized agency as managing conservator of the child;

(2) a waiver of process in a suit to terminate the parent-child relationship brought under Section 15.02(1)(K) of this code, or in a suit to terminate joined with a petition for adoption under Section 16.03(b) of this code; and

(3) a consent to the placement of the child for adoption by the State Department of Public Welfare or by an agency authorized by the State Department of Public Welfare to place children for adoption.

(d) An affidavit of relinquishment of parental rights which designates as the managing conservator of the child the State Department of Public Welfare or an agency authorized by the State Department of Public Welfare to place children for adoption is irrevocable. Any other affidavit of relinquishment is revocable unless it expressly provides that it is irrevocable for a stated period of time not to exceed 60 days after the date of its execution.

Section 15.04. Affidavit of Status of Child. (a) If the child is not the legitimate child of the father, an affidavit shall be executed by the mother, whether or not a minor, witnessed by two credible persons, and verified before any person authorized to take oaths.

(b) The affidavit must state:

(1) that the mother is not and has not been married to the father of the child;

(2) that the mother and father have not attempted to marry under the laws of this state or another state or nation;

(3) that paternity has not been established under the laws of any state or nation; and

(4) one of the following, as applicable:

(A) the father is unknown and no probable father is known;

(B) the name of the father, but the affiant does not know the whereabouts of the father;

(C) the father has executed a statement of paternity under Section 13.22 of this code and an affidavit of relinquishment of parental rights under Section 15.03 of this code and both affidavits have been filed with the court;

(D) the name and whereabouts of the father; or

(E) the name of any probable father of the child.

(c) The affidavit of status of child may be executed at any time after the first trimester of the pregnancy of the mother.

Section 15.041. Affidavit of Waiver of Interest in Child. (a) A person may execute an affidavit disclaiming any interest in a child and waiving notice or the service of citation in any suit to be filed affecting the parent-child relationship with respect to the child.

(b) The affidavit shall be signed by the person, whether or not a minor, witnessed by two credible persons, and verified before a person authorized to take oaths. The affidavit may be executed before the birth of the child.

(c) The affidavit may contain a statement that the affiant does not admit being the father of the child or having had a sexual relationship with the mother of the child.

(d) An affidavit of waiver of interest in a child may be used in any proceeding in which the affiant attempts to establish an interest in the child. The affidavit may not be used in any proceeding brought by another person to establish the affiant's paternity of the child.

Section 15.05. Decree (a) If the court finds grounds for termination of the parent-child relationship, it shall enter a decree terminating the parent-child relationship.

(b) If the court terminates the parent-child relationship with respect to both parents or to the only living parent, the court shall appoint a suitable, competent adult or authorized agency as managing conservator of the child. An agency designated managing conservator in an unrevoked or irrevocable affidavit of relinquishment shall be appointed managing conservator. The order of appointment may refer to the docket number of the suit and need not refer to the parties nor be accompanied by any other papers in the record.

(c) If the court does not order termination of the parent-child relationship, it shall:

(1) dismiss the petition; or

(2) enter any order considered to be in the best interest of the child.

Section 15.06. Dismissal of Petition. A petition for termination of the parent-child relationship may not be dismissed on the motion of the petitioner except by order of the court entered on the written motion of all parties to the proceeding. Unless otherwise stated in the court's order, the dismissal is without prejudice.

Section 15.07. Effect of Decree. A decree terminating the parent-child relationship divests the parent and the child of all legal rights, privileges, duties, and powers, with respect to each other, except that the child retains the right to inherit from and through its divested parent unless the court otherwise provides. Nothing in this chapter shall preclude or affect the rights of a natural maternal or paternal grandparent to reasonable access under Section 14.03(d) of this code.

CHAPTER 17. SUIT FOR PROTECTION OF CHILD IN EMERGENCY

Section 17.01. Taking Possession in Emergency
Section 17.02 Hearing
Section 17.03. Notice
Section 17.04. Grounds and Disposition
Section 17.05. Duration of Order
Section 17.06. Modification
Section 17.07. Effect of Appeal
Section 17.08. Continuing Jurisdiction Not Retained
Section 17.09. Civil Liability

Section 17.01. Taking Possession in Emergency. An authorized representative of the State Department of Public Welfare, a law-enforcement officer, or a juvenile probation officer may take possession of a child to protect him from an immediate danger to his health or physical safety and deliver him to any court having jurisdiction of suits under this subtitle, whether or not the court has continuing jurisdiction under Section 11.05 of this code. The child shall be delivered immediately to the court.

Section 17.02. Hearing. Unless the child is taken into possession pursuant to a temporary order entered by a court under Section 11.11 of this code, the officer or representative shall file a petition in the court immediately on delivery of the child to the court, and a hearing shall be held to provide for the temporary care or protection of the child.

Section 17.03. Notice. The proceeding under Section 17.02 of this code may be held without notice.

Section 17.04. Grounds and Disposition. On a showing that the child is apparently without support

and is dependent on society for protection, or that the child is in immediate danger of physical or emotional injury, the court may make any appropriate order for the care and protection of the child and may appoint a temporary managing conservator for the child.

Section 17.05. Duration of Order. (a) An order issued under Section 17.04 of this code expires at the end of the 10-day period following the date of the order, on the restoration of the child to the possession of its parent, guardian, or conservator, or on the issuance of ex parte temporary orders in a suit affecting the parent-child relationship under this subtitle, whichever occurs first.

(b) If the child is not restored to the possession of its parent, guardian, or conservator, the court shall:

(1) order such restoration of possession; or

(2) direct the filing of a suit affecting the parent-child relationship in the appropriate court with regard to continuing jurisdiction.

Section 17.06. Modification. On the motion of a parent, managing conservator, or guardian of the person of the child, and notice to those persons involved in the original emergency hearing, the court shall conduct a hearing and may modify any emergency order made under this chapter if found to be in the best interest of the child.

Section 17.07. Effect of Appeal. An appeal from an emergency order made under this chapter does not stay the order.

Section 17.08. Continuing Jurisdiction Not Retained. The court having jurisdiction of a child under this chapter does not retain continuing jurisdiction within the meaning of Section 11.05 of this code.

Section 17.09. Civil Liability. A person who takes possession of a child under Section 17.01 of this code is immune from civil liability if, at the time possession is taken, he had reasonable cause to believe there was an immediate danger to the physical safety or emotional well-being of the child.

CHAPTER 34. REPORT OF CHILD ABUSE

Section 34.01.	Persons Required to Report
Section 34.02.	Contents of Report: To Whom Made
Section 34.03.	Immunities
Section 34.04.	Privileged Communications
Section 34.05.	Investigation and Report of Receiving Agency
Section 34.06.	Central Registry
Section 34.07.	Failure to Report: Penalty
Section 34.08.	Confidentiality

Section 34.01. Persons Required to Report. Any person having cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect shall report in accordance with Section 34.02 of this code.

Section 34.02. Contents of Report: To Whom Made. (a) Nonaccusatory reports reflecting the reporter's belief that a child has been or will be abused or neglected, or has died of abuse or neglect, has violated the compulsory school attendance laws on three or more occasions, or has, on three or more occasions, been voluntarily absent from his home without the consent of his parent or guardian for a substantial length of time or without the intent to return shall be made to:

(1) the State Department of Public Welfare;

(2) the agency designated by the court to be responsible for the protection of children; or

(3) any local or state law enforcement agency.

(b) All reports must contain the name and address of the child, the name and address of the person responsible for the care of the child, if available, and any other pertinent information.

(c) All reports received by any local or state law enforcement agency shall be referred to the State Department of Public Welfare or to the agency designated by the court to be responsible for the protection of children.

(d) An oral report shall be made immediately on learning of the abuse or neglect as prescribed in Subsection (a) of this section, and a written report shall be made within five days to the same agency or department. Anonymous reports, while not encouraged, will be received and acted on in the same manner as acknowledged reports.

Section 34.03. Immunities. Any person reporting pursuant to this chapter is immune from liability, civil or criminal, that might otherwise be incurred or imposed. Immunity extends to participation in any judicial proceeding resulting from the report. Persons reporting in bad faith or malice are not protected by this section.

Section 34.04. Privileged Communications. In any proceeding regarding the abuse or neglect of a child or the cause of any abuse or neglect, evidence may not be excluded on the ground of privileged communication except in the case of communications between attorney and client.

Section 34.05. Investigation and Report of Receiving Agency. (a) The State Department of Public Welfare or the agency designated by the court to be responsible for the protection of children shall make a thorough investigation promptly after receiving either

the oral or written report. The primary purpose of the investigation shall be the protection of the child.

(b) In the investigation the department or agency shall determine:

(1) the nature, extent, and cause of the abuse or neglect;

(2) the identity of the person responsible for the abuse or neglect;

(3) the names and conditions of the other children in the home;

(4) an evaluation of the parents or persons responsible for the care of the child;

(5) the adequacy of the home environment;

(6) the relationship of the child to the parents or persons responsible for the care of the child;

(7) all other pertinent data.

(c) The investigation shall include a visit to the child's home, a physical and psychological or psychiatric examination of all the children in that home, and an interview with the subject child. If admission to the home, school, or any place where the child may be, or permission of the parents or persons responsible for the child's care for the physical and psychological or psychiatric examinations cannot be obtained, then the juvenile court, or the district court, upon cause shown, shall order the parents or the persons responsible for the care of the children, or the person in charge of any place where the child may be, to allow entrance for the interview, above examinations, and investigation.

(d) If, before the investigation is complete, the opinion of the investigators is that immediate removal is

necessary to protect the child from further abuse or neglect, the investigators shall file a petition pursuant to Chapter 17 of this code for temporary care and protection of the child.

(e) The agency designated by the court to be responsible for the protection of children or the department shall make a complete written report of the investigation. The report, together with its recommendations, shall be submitted to the juvenile court or the district court, the district attorney, and the appropriate law enforcement agency if sufficient grounds for the institution of a suit affecting the parent-child relationship are found.

(f) On the receipt of the report and recommendation required by Subsection (e) of this section, the court may direct the investigator to file a petition seeking appropriate relief under Subtitle A of this title.

Section 34.06. Central Registry. The State Department of Public Welfare shall establish and maintain in Austin, Texas, a central registry of reported cases of child abuse or neglect. The department may adopt rules and regulations as are necessary in carrying out the provisions of this section. The rules shall provide for cooperation with local child service agencies, including hospitals, clinics, and schools, and cooperation with other states in exchanging reports to effect a national registration system.

Section 34.07. Failure to Report: Penalty. (a) A person commits an offense if the person has cause to believe that a child's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect and knowingly fails to report in accordance with Section 34.02 of this code.

(b) An offense under this section is a Class B misdemeanor.

Section 34.08. Confidentiality. The reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.

CHAPTER 35. CONSENT TO MEDICAL TREATMENT

Section 35.01.	Who May Consent
Section 35.02.	Consent Form
Section 35.03.	Consent to Treatment by Minor
Section 35.04.	Examination of Abused or Neglected Children

Section 35.01. Who May Consent. Any of the following persons may consent to medical treatment of a minor when the person having the power to consent as otherwise provided by law cannot be contacted and actual notice to the contrary has not been given by that person:

(1) a grandparent;

(2) an adult brother or sister;

(3) an adult aunt or uncle;

(4) an educational institution in which the minor is enrolled that has received written authorization to consent from the person having the power to consent as otherwise provided by law;

(5) any adult who has care and control of the minor and has written authorization to consent from the person having the power to consent as otherwise provided by law; or

(6) any court having jurisdiction of the child.

Section 35.02. Consent Form. (a) Consent to medical treatment under Section 35.01 of this code shall be in writing, signed by the person giving consent, and given to the doctor, hospital, or other medical facility that administers the treatment.

(b) The consent must contain:

(1) the name of the minor;

(2) the name of one or both parents, if known, and the name of the managing conservator or guardian of the person, if either has been appointed;

(3) the name of the person giving consent and his relation to the minor child;

(4) a statement of the nature of the medical treatment to be given; and

(5) the date on which the treatment is to begin.

Section 35.03. Consent to Treatment by Minor. (a) A minor may consent to the furnishing of hospital, medical, surgical, and dental care by a licensed physician or dentist if the minor:

(1) is on active duty with the armed services of the United States of America;

(2) is 16 years of age or older and resides separate and apart from his parents, managing conservator, or guardian, whether with or without the consent of the parents, managing conservator, or guardian and regardless of the duration of such residence, and is managing his own financial affairs, regardless of the source of the income;

(3) consents to the diagnosis and treatment of any infectious, contagious, or communicable disease which is required by law or regulation adopted pursuant to law to be reported by the licensed physician or dentist to a local health officer;

(4) is unmarried and pregnant, and consents to hospital, medical, or surgical treatment, other than abortion, related to her pregnancy;

(5) is 18 years of age or older and consents to the donation of his blood and the penetration of tissue necessary to accomplish the donation; or

(6) consents to examination and treatment for drug addiction, drug dependency, or any other condition directly related to drug use.

(b) Consent by a minor to hospital, medical, surgical, or dental treatment under this section is not subject ot (sic) disaffirmance because of minority.

(c) Consent of the parents, managing conservator, or guardian of a minor is not necessary in order to authorize hospital, medical, surgical, or dental care under this section.

(d) A licensed physician or dentist may, with or without the consent of a minor who is a patient, advise the parents, managing conservator, or guardian of the minor of the treatment given to or needed by the minor.

(e) A physician or dentist licensed to practice medicine or dentistry in this state or a hospital or medical facility shall not be liable for the examination and treatment of minors under this section except for his or its own acts of negligence.

(f) A physician, dentist, hospital, or medical facility may rely on the written statement of the minor containing the grounds on which the minor has capacity to consent to his own medical treatment under this section.

Section 35.04. Examination of Abused or Neglected Children. (a) Except as provided in Subsection (b) of this section, a licensed physician or dentist having reasonable grounds to believe that a child's physical or mental condition has been adversely

affected by abuse or neglect may examine the child without the consent of the child, the child's parents, or other person authorized to consent for the child or his parents. The examination may include X-rays, blood tests, and penetration of tissue necessary to accomplish these tests.

(b) Unless consent is obtained as otherwise allowed by law, a physician or dentist may not examine a child:

(1) who is 16 years old or over and refuses to consent; or

(2) if consent is refused by an order of a court.

(c) A physician or dentist examining a child under the authority of this section is not liable for damages except those damages resulting from his negligence.

APPENDIX J

TEXAS RULES OF CIVIL PROCEDURE REGARDING INJUNCTION

RULE 680
RULE 681
RULE 682
RULE 683
RULE 685
RULE 686
RULE 687
RULE 688
RULE 689
RULE 690
RULE 692
RULE 693

SECTION 5. INJUNCTIONS

Rule 680. Temporary Restraining Order.

No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed ten days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the application for a temporary injunction shall be set down for hearing at the earliest possible date and takes precedence of all matters except older matters of the same character; and when the application comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a temporary injunction, and, if he does not do so, the court shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

Source: Federal Rule 65(b), with minor textual change, superseding Art. 4654.

Rule 681. Temporary Injunctions: Notice

No temporary injunction shall be issued without notice to the adverse party.

Source: Federal Rule 65(a), with minor textual change.

Rule 682. Sworn Petition

No writ of injunction shall be granted unless the applicant therefor shall present his petition to the judge verified by his affidavit and containing a plain and intelligible statement of the grounds for such relief. Amended by order of March 31, 1941, effective Sept. 1, 1941.

Source: Art. 4647, unchanged.

Rule 683. Form and Scope of Injunction or Restraining Order

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Source: Federal Rule 65(d), unchanged.

Rule 685. Filing and Docketing

Upon the grant of a temporary restraining order or an order fixing a time for hearing upon an application for a temporary injunction, the party to whom the same is granted shall file his petition therefor, together with the order of the judge, with the clerk of the proper court; and, if such orders do not pertain to a pending suit in said court, the cause shall be entered on the docket of the court in its regular order in the name of the party applying for the writ as plaintiff and of the opposite party as defendant.

Source: Art. 4650, harmonized with the Federal Rules adopted above by minor textual change.

Rule 686. Citation

Upon the filing of such petition and order not pertaining to a suit pending in the court, the clerk of such court shall issue a citation to the defendant as in other civil cases, which shall be served and returned in like manner as ordinary citations issued from said court; provided, however, that when a temporary restraining order is issued and is accompanied with a true copy of plaintiff's petition, it shall not be necessary for the citation in the original suit to be accompanied with a copy of plaintiff's petition, nor contain a statement of the nature of plaintiff's demand, but it shall be sufficient for said citation to refer to plaintiff's claim as set forth in a true copy of plaintiff's petition which accompanies the temporary restraining order; and provided further that the court may have a hearing upon an application for a temporary restraining order or temporary injunction at such time and upon such reasonable notice given in such manner as the court may direct. Amended by order of June 16, 1943, effective Dec. 31, 1943; order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 4655

Rule 687. Requisites of Writ

The writ of injunction shall be sufficient if it contains substantially the following requisites:

(a) Its style shall be, "The State of Texas."

(b) It shall be directed to the person or persons enjoined.

(c) It must state the names of the parties to the proceedings, plaintiff and defendant, and the nature of the plaintiff's application, with the action of the judge thereon.

(d) It must command the person or persons to whom it is directed to desist and refrain from the commission or continuance of the act enjoined, or to obey and execute such order as the judge has seen proper to make.

(e) If it is a temporary restraining order, it shall state the day and time set for hearing, which shall not exceed ten days from the date of the court's order granting such temporary restraining order; but if it is a temporary injunction, issued after notice, it shall be made returnable at or before ten o'clock a.m. of the Monday next after the expiration of twenty days from the date of service thereof, as in the case of ordinary citations.

(f) It shall be dated and signed by the clerk officially and attested with the seal of his office and the date of its issuance must be indorsed thereon.

Source: Art. 4651.

Rule 688. Clerk To Issue Writ

When the petition, order of the judge and bond have been filed, the clerk shall issue the temporary

restraining order or temporary injunction, as the case may be, in conformity with the terms of the order, and deliver the same to the sheriff or any constable of the county of the residence of the person enjoined, or to the applicant, as the latter shall direct. If several persons are enjoined, residing in different counties, the clerk shall issue such additional copies of the writ as shall be requested by the applicant.

Source: Art. 4652, with minor textual change.

Rule 689. Service and Return

The officer receiving a writ of injunction shall indorse thereon the date of its receipt by him, and shall forthwith execute the same by delivering to the party enjoined a true copy thereof. The original shall be returned to the court from which it issued on or before the return day named therein with the action of the officer indorsed thereon or annexed thereto showing how and when he executed the same.

Source: Art. 4653, unchanged.

Rule 690. The Answer

The defendant to an injunction proceeding may answer as in other civil actions; but no injunction shall be dissolved before final hearing because of the denial of the material allegations of the plaintiff's petition, unless the answer denying the same is verified by the oath of the defendant.

Source: Art. 4657, unchanged.

Rule 692. Disobedience

Disobedience of an injunction may be punished by the court or judge, in term time or in vacation, as a contempt. In case of such disobedience, the

complainant, his agent or attorney, may file in the court in which such injunction is pending or with the judge in vacation, his affidavit stating what person is guilty of such disobedience and describing the acts constituting the same; and thereupon the court or judge shall cause to be issued an attachment for such person, directed to the sheriff or any constable of any county, and requiring such officer to arrest the person therein named if found within his county and have him before the court or judge at the time and place named in such writ; or said court or judge may issue a show cause order, directing and requiring such person to appear on such date as may be designated and show cause why he should not be adjudged in contempt of court. On return of such attachment or show cause order, the judge shall proceed to hear proof; and if satisfied that such person has disobeyed the injunction, either directly or indirectly, may commit such person to jail without bail until he purges himself of such contempt, in such manner and form as the court or judge may direct. As amended by order of June 16, 1943, effective December 31, 1943.

Source: Art. 4661.

Rule 693. Principles of Equity Applicable

The principles, practice and procedure governing courts of equity shall govern proceedings in injunctions when the same are not in conflict with these rules or the provisions of the statutes.

Source: Art. 4663, with minor textual change.